

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

FRANCISCO SAENZ AKA FRANK
SAENZ

Plaintiff,

v.

NATIONWIDE PROPERTY AND
CASUALTY INSURANCE COMPANY,
Defendant.

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CIVIL ACTION NO. 7:15-cv-134

NOTICE OF REMOVAL

Defendant, Nationwide Property and Casualty Insurance Company (“Defendant”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1441 and 1446, files this Notice of Removal of the captioned action Francisco Saenz v. Nationwide Property and Casualty Insurance Company; Cause No: C-0928-15-H, in the 389th District Court of Hidalgo County, Texas.

BACKGROUND

1. Plaintiff Francisco Saenz (“Plaintiff”) initiated the present action by filing his Original Petition in Cause No: C-0928-15-H, in the 389th District Court of Hidalgo County, Texas on March 3, 2015 (the “State Court Action”). *See* Plaintiff’s Original Petition, attached as **Exhibit 1**.

2. Defendant was served with Plaintiff’s Original Petition on March 16, 2015, and filed its Original Answer on April 2, 2015, asserting a general denial to the claims and allegations made in Plaintiff’s Original Petition. *See* Defendant’s Original Answer, attached as **Exhibit 2**.

3. Pursuant to 28 USC § 1446(a) and LR 81, all required process, pleadings, and orders in the State Court Action not otherwise specifically identified as separate exhibits have been requested and will be filed upon receipt.

II. DIVERSITY JURISDICTION

4. Pursuant to 28 U.S.C. § 1441(a) “any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

5. Plaintiff is domiciliary in Hidalgo County, Texas. *See Exhibit 1, ¶ 2.* Pursuant to 28 U.S.C. § 1332(a), therefore, Plaintiff is a citizen of the State of Texas.

6. Defendant is organized under the laws of Ohio and maintains its principal place of business in Columbus, Franklin County, Ohio. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Defendant is a citizen of the State of Ohio.

7. Removal is proper pursuant to 28 U.S.C. § 1332 as there is complete diversity between Plaintiff and Defendant as Defendant is not a citizen of the state in which this case was brought.

8. Pursuant to 28 U.S.C. § 1332(a)(1), “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different States.”

9. Plaintiff has pled that he seeks monetary relief “between \$200,000 – \$1,000,000.” *See Exhibit 1, ¶ 4.*

10. Plaintiff filed his Original Petition on March 3, 2015, seeking compensation for (1) actual damages, (2) treble damages, (3) 18% penalty interest attorney’s fees, (4) penalties, (6) pre and post-judgment interest, and (7) attorney’s fees. *See Exhibit 1, ¶¶ 48-54.*

11. Plaintiff has alleged that Defendant’s conduct was wrongful and done knowingly, entitling him to a trebling of actual damages under Texas Insurance Code Chapter 541. *See*

Exhibit 1, ¶ 47; Tex. Ins. Code sections 541.002 & 541.152.

12. Penalties, exemplary damages, and attorneys' fees are included as part of the amount in controversy.¹ The amount in controversy plainly exceeds \$75,000, exclusive of interest and costs. *See Exhibit 1.*

13. Pursuant to 28 USC § 1446(b)(1), this Notice of Removal is being filed within 30 days of service on Defendant of Plaintiff's Original Petition and, pursuant to 28 USC § 1446(c)(1), less than one year after the commencement of this action.

14. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Removal Notice, Defendant will give written notice of the removal to Plaintiff through his attorney of record, and to the clerk of the 389th Judicial District Court of Hidalgo County, Texas

(Signatures on Following Page)

¹ See *H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000); see also *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

Respectfully submitted,

/s/ Patrick M. Kemp

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the following counsel of record via CM/ECF and regular mail on this 2nd day of April, 2015.

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/s/ Patrick M. Kemp

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